



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

CLARENCE MILLER,  
aka Clarence Scott Miller,  
Plaintiff,

vs.

SPARTANBURG REGIONAL et al.,  
Defendants.

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CIVIL ACTION NO. 6:10-2662-HFF-KFM

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ORDER

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This case was filed as a 42 U.S.C. § 1983 action. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the case be dismissed without prejudice and without issuance and service of process. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 21, 2010, and the Clerk of Court entered Plaintiff's objections to the Report on December 9, 2010. Subsequently, on December 15, 2010, the Clerk entered Plaintiff's motion to amend.

The Court **GRANTS** the motion to amend, which "modif[ies] earlier pleadings actionable under 42 U.S.C. § 1983 as deliberate indifference and not medical malpractice or gross negligence by individuals in the above[-]captioned matter." (Plaintiff's Motion 1.) The amendment to the Complaint, however, is insufficient to prevent dismissal of the action. Simply stated, the objections are without merit. Thus, for the reasons set forth in the Report, minus those regarding medical malpractice and negligence, the Court will dismiss the action.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report to the extent that it does not contradict this Order, and incorporates it herein. Therefore, it is the judgment of this Court that the case is **DISMISSED** without prejudice and without issuance and service of process.

**IT IS SO ORDERED.**

Signed this 29th day of December, 2010, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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**NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within thirty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.